SHEARMAN & STERLING LLP

A QUARTERLY NEWSLETTER FOR CORPORATES

JANUARY 2016/EUROPE

Governance & Securities Law Focus

In this newsletter, we provide a snapshot of the principal European, US and selected international governance and securities law developments of interest to European corporates.

Financial regulation developments are available here.

In this Issue (please click on any title to go directly to the corresponding discussion):

EU DEVELOPMENTS **2**
Transparency Directive: Updated ESMA Q&As 2
Financial Reporting: ESMA Public Statement on Improving the Quality of Disclosures in Financial Statements 2
MiFID II: ESMA Note on MIFID II Implementation Delay 2
Invest Europe Updated Handbook of Professional Standards 2
Prospectus Directive: Commission Proposal for a New Prospectus Regulation 3
European Company Law: Codification of Directives 3
GERMAN DEVELOPMENTS **4**
Amendment of German Stock Corporation Act 4
UK DEVELOPMENTS **4**
PSC Register: Draft Non-Statutory Guidance for Companies 4
PSC Register: Government Response to Consultation 5
PSC Register: Draft Statutory Guidance on the Meaning of Significant Influence or Control 5
Statutory Audit: Updated BIS Consultation on Implementation of EU Audit Reform 6
Corporate Governance: PLSA Corporate Governance Policy and Voting Guidelines 2015/2016 6
Corporate Governance: ISS UKI Proxy Voting Guidelines Update 7
Corporate Governance: FRC to Introduce Public Assessment of Reporting Against Stewardship Code 7
Corporate Governance: Investment Association Principles of Remuneration 2015 8
Financial Reporting: FRC Report on Developments in Clear and Concise Narrative Reporting 8
Financial Reporting: FRC Letter to Audit Committee Chairs on Improving Corporate Reporting 8
Financial Reporting: FRC Letter of Advice to Smaller Listed and AIM Companies on How to Improve Annual Reports 9
Financial Reporting: FRC Review of Companies' Tax Reporting 9
Financial Reporting: Financial Reporting Lab Publish Report on Disclosure of Dividends 9
Financial Reporting: FRC Discussion Paper on Succession Planning 10
Financial Reporting: FRC Corporate Reporting Review 10
Financial Reporting: Modern Slavery Act 2015 11
FCA: Revised Guidance on Advancing its Objectives 11
FCA Quarterly Consultation No 11 12
LR and DTR: FCA Publishes Handbook Notice No 26 and Response to CP15/19 12
Prospectus Directive: FCA Note on Sending Final Terms to Host Competent Authorities 13
UKLA Guidance Note: Primary Market Bulletin No 12 13
Disclosure and Transparency Rules: FCA Consultation on Delaying Disclosure of Inside Information 13
Directors' Remuneration: GC100 and Investor Group's 2015 Statement 14
Admission and Disclosure Standards: Consultation on Amendments to Standards and High Growth Segment Rulebook 14
Draft Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 15
Takeover Code: Statement of Public Censure of Advisers for Code Breaches 15
Takeover Code: Response Statement on Additional Presumptions to the Definitions of Acting in Concert 16
Takeover Code: Response Statement on Amendments to the Definition of Voting Rights 16
Takeover Code: New Panel Practice Statements 17
Consultation on Changes to AIM Rules for Companies 17
First UK Deferred Prosecution Agreement Approved by the English Courts 17
US DEVELOPMENTS **18**
SEC and NYSE/Nasdaq Developments 18
Sanctions Developments 23
Noteworthy US Securities Law Litigation 23
Recent SEC/DOJ Enforcement Matters 25

EU DEVELOPMENTS

Transparency Directive: Updated ESMA Q&As

On 23 October 2015, the European Securities and Markets Authority ("ESMA") published an update to its Q&As on the Transparency Directive.

The update includes the insertion of new questions on, amongst others, the reporting of payments to governments at consolidated level, horizontal aggregation, changes of home member state during a transitional period, financial reporting and information, publication of sanctions and shareholder notifications.

A copy of the updated Q&As is available here:

https://www.esma.europa.eu/sites/default/files/library/2015/11/esma-2015-1595_document_qas_on_td.pdf

Financial Reporting: ESMA Public Statement on Improving the Quality of Disclosures in Financial Statements

On 27 October 2015, ESMA published a public statement on improving the quality of disclosures in IFRS financial statements to address concerns surrounding the lack of relevant information and increasing size of annual reports.

ESMA proposes that the following principles be considered with regards to disclosures made in annual reports:

- Provide information that is as entity specific as possible and avoid boilerplate language;
- Provide information that is necessary to understand the issuer's financial performance and position;
- Use the materiality concept under IFRS more effectively and remove irrelevant information;
- Financial statements should be as clear and concise as possible; and
- Issuers and auditors should ensure that financial statements and supporting documents are consistent.

A copy of the report is available here:

https://www.esma.europa.eu/search/site/quality%2520of%2520disclosures

MiFID II: ESMA Note on MIFID II Implementation Delay

On 17 November 2015, ESMA published a note on delaying the implementation of the Markets in Financial Instruments Directive ("MiFID") II. It is unlikely that the Level 2 provisions will be published until March 2016, leaving insufficient time to develop the systems for MiFID II implementation.

ESMA identifies four areas where the complexity, interaction and need for a harmonised start date of the systems are especially acute: reference data, transaction reporting, transparency parameters and position reporting.

ESMA also discusses the pros and cons of different options for imposing an implementation delay.

The full text of the note is available here:

https://www.esma.europa.eu/search/site/MiFID%2520II%2520Implementation%2520Day?page=1

Invest Europe Updated Handbook of Professional Standards

On 24 November 2015, Invest Europe, previously EVCA, published a new version of its handbook relevant to the private equity industry.

Amendments to the version published in January 2014 include amendments to:

- Section 3.3 (investing), to emphasise the various factors the general partner ("GP") should consider with regards to responsible investing;

- Paragraph 3.3.7 (GP's consent to portfolio company actions and board appointments), suggesting that the GP obtain investor consent for various matters;
- Paragraph 3.4.10 (follow-on-investments), suggesting that follow-on investments in a portfolio company should be made by the fund that made the original investment;
- Paragraph 3.4.11 (underperforming investments), specifying that local legal advice must be sought when managing an underperforming investment, and the portfolio company must ensure to remain in compliance with all applicable legal and regulatory requirements;
- Paragraph 3.4.12 (factors particular to investing in distressed assets) has been inserted, which focuses on key considerations when dealing with distressed assets; and
- Paragraph 3.5.1 (implementation of divestment planning), which recommends that the GP should consider any relevant environmental, social and governance factors when preparing for a portfolio company exit.

The full text of the adopted amendments is available here:

http://www.investeurope.eu/media/431779/Invest-Europe-Professional-Standards-Handbook-2015.pdf

Prospectus Directive: Commission Proposal for a New Prospectus Regulation

On 30 November 2015, the European Commission proposed a new Prospectus Regulation to repeal and replace the Prospectus Directive.

Amendments to be made by the new Prospectus Regulation include:

- A higher threshold of capital raisings of €500,000 or above before companies must issue a prospectus. Member states will be able to set higher thresholds with the option to exempt offers to securities to the public from the prospectus requirement where such offer is only made within that member state and the total consideration does not exceed €10 million;
- A 'lighter prospectus' for small and medium-sized enterprises ("SMEs"). SMEs with a market capitalisation of under €200 million and with no securities admitted to trading on a regulated market would be allowed to prepare a distinct prospectus;
- A simplified prospectus for companies already listed on the public market who are making a secondary issuance;
- A new prospectus summary;
- A new annual 'universal registration document' which would contain all the necessary information on a company wanting to list shares or issue debt. Issuers who maintain this document would benefit from a five day fast track approval when issuing shares, bonds or derivatives; and
- A single access point for all EU prospectuses (likely to be ESMA).

Further information on the proposal is available here:

http://ec.europa.eu/finance/securities/prospectus/index_en.htm

European Company Law: Codification of Directives

On 3 December 2015, the European Commission published a proposal for a directive which would repeal and codify the following:

- Sixth Company Law Directive (82/891/EEC) on the division of public limited liability companies;
- Eleventh Company Law Directive (89/666/EEC) on disclosure requirements in respect of branches;
- The Cross Border Mergers Directive (2005/56/EC);

- Directive 2009/101/EC on coordination of safeguards;
- Third Company Law Directive concerning mergers of public limited liability companies (codified) (2011/35/EU); and
- Second Company Law Directive on the formation of public limited companies and the alteration and maintenance of their capital (recast) (2012/30/EU).

The full text of the proposal is available here:

http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1452266398361&uri=CELEX:52015PC0616

GERMAN DEVELOPMENTS

Amendment of German Stock Corporation Act

Completing an extended rework process that began in 2010, the German legislator finally passed an amendment of the German Stock Corporation Act (the "AktG") in December 2015. The Amendment contains numerous changes and clarifications of the AktG, the most significant of which are:

- The issuance of bearer shares is subject to a number of restrictions, as stock corporations will only be able to issue bearer shares if (i) they are publicly traded, or (ii) the right to demand the execution of individual share certificates is excluded and a global share certificate is deposited with a central securities depository;
- Currently, holders of shares equal to 5% or more of the share capital may call for a general meeting and, if such quorum is met or the total nominal value of the shares held exceed €500,000, may require the corporation to add items to the general meeting's agenda. These shareholder rights require the shares fulfilling the quorum to have been held for a certain period of time in advance of the general meeting. The amendment clarifies this must be at least 90 days prior to the corporation's receipt of the meeting request or request to add agenda items, and the shareholders must continue to hold the shares until management or, if management rejects the request, a court reaches a decision;
- The amendment also introduces reverse convertible bonds ("*umgekehrte Wandelanleihen*") into the AktG and enables corporations to use contingent capital ("*bedingtes Kapitel*") as a source for new shares at the time of conversion. Reverse convertible bonds also entitle the corporation itself to convert bonds into equity at its discretion. Thus, reverse convertible bonds mainly serve as a restructuring tool ("debt-to-equity swap") or, for credit institutions, in order to fulfill bank regulatory requirements. Although reverse convertible bonds have been issued by German corporations in the past (e.g. as "contingent convertible bonds" or "mandatory convertible bonds"), the permission to issue such instruments had not explicitly been implemented into the AktG; and
- Generally, the total volume of the new shares issued through contingent capital is capped at 50% of existing share capital. The amendment entitles the issuer of convertible bonds to exceed such limit if the sole purpose of the contingent capital increase is to enable the corporation to convert bonds into equity (i) in case of an impending insolvency ("*drohende Zahlungsunfähigkeit*"), (ii) to avoid an over-indebtedness ("*Abwendung einer Überschuldung*") or (iii) if the corporation is a credit institution, to fulfill bank regulatory requirements.

UK DEVELOPMENTS

PSC Register: Draft Non-Statutory Guidance for Companies

On 21 December 2015, the Department for Business, Innovation and Skills ("BIS") published draft non-statutory guidance for consultation on the requirement for companies to maintain a register of people with significant control (a "PSC").

The draft sets out government guidance relevant to the interpretation and application of new Part 21A of the Companies Act 2006, which substantially comes into force on 6 April 2016.

The guidance covers the process of identifying and recording PSCs. It does not cover detail of how to complete filings in relation to PSC information at Companies House.

The draft also provides guidance on how to apply the specified conditions for determining whether an individual is or is not a person with "significant control and influence." The guidance states that a person will have significant control over a company if one of the specified conditions is satisfied. The first three specified conditions require the holding of more than 25 per cent of the company's shares, or voting rights in the company, or the right to appoint or remove the majority of the board of directors. The fourth and fifth specified conditions require a person to have "significant influence or control" either over the company itself, or over the activities of a trust or a firm which meets any of the other specified conditions in relation to the company.

The consultation closed on 11 January 2016.

A copy of the draft guidelines is available here:

https://www.icsa.org.uk/assets/files/pdfs/Policy/PSC-Draft-Guidance-for-companies-17-December-2015.pdf

PSC Register: Government Response to Consultation

On 17 December 2015, BIS published the government's response to its consultation paper seeking views on the draft Register of People with Significant Control Regulations 2015.

The response included:

- A statement that companies with voting shares admitted to trading on a regulated market in an EEA state and companies listed on certain markets in Japan, the US, Switzerland and Israel will be exempt from the PSC requirements;
- A note that the government intends to put in place the application process proposed in the consultation paper for protecting secured information. The response also states that the registrar will be able to seek advice on the nature or extent of the risk of violence or intimidation from any authority as it deems fit;
- A section setting out proposals for the conditions to be satisfied for a person to be treated as having significant control of a LLP; and
- A statement that participants in foreign arrangements similar to limited partners in an English limited partnership, who do not take part in the management of that arrangement, will not meet the first three conditions mentioned above for significant control just by virtue of being in a position similar to that of a limited partner.

The government response can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486520/BIS-15-622-register-of-people-with-significant-control-consultation-response.pdf

PSC Register: Draft Statutory Guidance on the Meaning of Significant Influence or Control

On 21 December 2015, BIS published a consultation paper on the draft statutory guidance on the meaning of "significant influence or control" for the purposes of a company determining whether a person is a person with significant influence or control under the fourth or fifth specified conditions mentioned above (under "PSC register: draft non-statutory guidance for companies").

The draft guidance also sets out specific safe harbours that will avoid a person being treated as having "significant influence" purely because it has a function in relation to the company falling within the safe harbour. These safe harbours include:

- A person providing advice or direction in a professional capacity;
- A person engaging in a third party commercial or financial agreement;
- An employee acting in the course of their employment; and
- A director of the company.

The consultation closed on 11 January 2016.

A copy of the draft guidelines is available here:

https://www.icsa.org.uk/assets/files/pdfs/Policy/PSC-register---Draft-Statutory-Guidance---3-December-2015.pdf

Statutory Audit: Updated BIS Consultation on Implementation of EU Audit Reform

On 17 November 2015, BIS published updated proposals to amend the Companies Act 2006. These proposals, alongside the draft Statutory Auditors and Third Country Auditors Regulations 2016 consulted on in October 2015, form part of the government's proposals to incorporate the EU Directive amending the Statutory Audit Directive into national law and on legislative provisions needed as part of the application of the EU Regulation on the statutory audit of public interest entities (generally listed and certain credit and insurance entities).

The updated draft proposals include provisions which enable either (a) the Financial Reporting Council ("FRC") or (b) shareholders representing 5 per cent or more of the voting rights or of the share capital of the company to bring a claim before a national court for the dismissal of the statutory auditor of a public interest entity where there are proper grounds for doing so. However, the consultation paper notes that the government has not prescribed what constitutes "proper" or "improper grounds."

The draft amendments also include an updated definition of public interest entity in section 519A of the Act.

The consultation closed on 9 December 2015.

The draft amendments can be accessed here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483287/BIS-15-609-draft-schedule-of-amendments.pdf

Corporate Governance: PLSA Corporate Governance Policy and Voting Guidelines 2015/2016

On 12 December 2015, the Pensions and Lifetime Savings Association ("PLSA") published an updated edition of its Corporate Governance Policy and Voting Guidelines. These guidelines seek to reflect current market best practice as determined through consultation with PLSA members, and the aim of the guidelines is to assist members in promoting the long-term success of the companies they invest in and ensuring that the board and management of these companies are accountable to shareholders. The guidelines also aim to assist investors and proxy voting agents in their interpretation of the provisions of the UK Corporate Governance Code.

Key aspects which have been revised in this version of the guidelines include:

- An emphasis on the need for the company to articulate clearly how key tangible and intangible assets are engaged in the generation of sustainable value creation when reporting on strategic risk in accordance with Section C of the Code;
- A note that shareholders should be mindful of any concurrent directorships and other time commitments that non-executive directors and chairs may have;

- A comment on dividend policy disclosure, which the guidelines suggest should be specific enough to understand what the policy means in practice;
- A new requirement that companies should clearly signal, at their earliest opportunity, any intention they may have to undertake a non-pre-emptive share issue and to engage in dialogue with their shareholders about this;
- A statement that the board should provide investors with an understanding of the process used to identify when a share buyback is appropriate, the maximum price the company would be prepared to pay and the hurdle rate in respect of the buyback linking it to the overall capital management framework of the company; and
- New detailed voting guidelines on shareholder resolutions and the need for management to be available to engage with shareholders to facilitate an understanding of the rationale and merits of a resolution.

A copy of these guidelines can be found here:

http://www.plsa.co.uk/PolicyandResearch/DocumentLibrary/~/media/Policy/Documents/0556-2016-Corporate-Governance-Policy-and-Voting-Guidelines.pdf

Corporate Governance: ISS UKI Proxy Voting Guidelines Update

On 20 November 2015, Institutional Shareholder Services Inc ("ISS") published an update to its benchmark proxy voting policies in light of the responses received to the October 2015 Consultation paper on changes to ISS UKI Proxy Voting Guidelines.

This update confirms that ISS will make the following changes to its UK and Ireland Proxy Voting Guidelines:

- A disapplication of pre-emption rights for up to 10 per cent of the issued share capital will now be acceptable, provided that the extra 5 per cent above the original 5 per cent is used only for the purposes of an acquisition or a specified capital investment;
- There will be a recommended maximum number of boards on which directors should sit and ISS may recommend voting against the election or re-election of directors who sit on too many boards; and
- ISS' policy on non-audit service fees will be extended to smaller companies.

The updated policies will generally be applied for shareholder meetings on or after 1 February 2016. The update can be found here:

http://www.issgovernance.com/file/policy/executive-summary-of-key-2016-updates-and-policy.pdf

Corporate Governance: FRC to Introduce Public Assessment of Reporting Against Stewardship Code

On 14 December 2015, the FRC announced that it will introduce public tiering of signatories to the Stewardship Code in July 2016 to improve reporting against the principles of the Stewardship Code and assist investors. The FRC stated that improved reporting will help asset owners judge how well their fund manager is delivering on their commitments under the Stewardship Code, help those who value engagement to choose the right manager and in consequence provide a market incentive in support of engagement.

To promote commitment to stewardship, the FRC will assess signatories' reporting against the Stewardship Code and make public its assessment. Signatories that meet reporting expectations on stewardship activities will be classed as Tier 1, with Tier 2 covering all those not meeting reporting expectations.

The FRC press release can be found here:

https://www.frc.org.uk/News-and-Events/FRC-Press/Press/2015/December/FRC-promotes-improved-reporting-by-signatories-to.aspx

Corporate Governance: Investment Association Principles of Remuneration 2015

On 11 November 2015, the Investment Association published its 2015 principles of remuneration. These are an updated version of the previous Association of British Insurers ("ABI") remuneration principles.

These principles set out the Investment Association's view of the role of the shareholders and the remuneration committee in relation to director's remuneration.

There are no significant changes to the principles other than a statement that Investment Association members expect long-term incentive plan awards to have a total performance and holding period of at least 5 years.

The 2015 principles can be accessed here:

https://www.ivis.co.uk/media/11101/Principles-of-Remuneration-2015-Final.pdf

For a summary of the previous ABI remuneration principles please see our Q4 2013 Governance and Securities Newsletter available here:

http://www.shearman.com/~/media/Files/NewsInsights/Publications/2014/01/Governance_and_Securities_Q4_Bulletin CMCGFIAECEBLT012414.pdf

Financial Reporting: FRC Report on Developments in Clear and Concise Narrative Reporting

On 17 December 2015, the FRC issued a report entitled "Clear & Concise: Developments in Narrative Reporting." The report focusses on the steps that companies have taken to achieve clear and concise reporting where annual reports provide relevant and easily understandable information for investors. The report highlights emerging best practice in narrative reporting and offers investor and company perspectives on processes that aid improvements in annual reports.

The report focuses on three areas:

- Clear and concise reporting – The FRC includes a description of what this term means and how companies can aim to achieve it;
- Impact of the strategic report – The FRC states that strategy reporting provides useful insights into how a company is managed. The report generally finds that the overall quality of corporate reporting has been improved by the use of the strategic report although opportunities for further improvement still exist (for example, there is scope for companies to take a longer-term view in their strategic reports); and
- Emerging developments – The report discusses a number of developments that will soon be enforced that will have an impact on corporate reporting in the future including, for example, new disclosure requirements.

The report also highlights focus areas for the next reporting period such as the application of materiality and improving reporting of key performance indicators, principle risks and forward-looking information.

The report can be accessed here:

https://www.frc.org.uk/Our-Work/Publications/Accounting-and-Reporting-Policy/Clear-Concise-Developments-in-Narrative-Reporti.pdf

Financial Reporting: FRC Letter to Audit Committee Chairs on Improving Corporate Reporting

On 15 December 2015, in preparation of the reporting season, the FRC wrote to audit committee chairs in larger listed companies summarising key developments for 2015 annual reports.

The letter states that, generally, the quality of corporate reporting is high but there are some areas where companies could improve their reporting. For example, the letter states that the annual reports should go beyond a compliance

driven approach and avoid boilerplate statements so that investors receive the relevant information in a clear and concise format.

The letter identifies some of the key themes in corporate governance and reporting, including considering the risks a company is exposed to and the importance of materiality assessments to underpin effective, tailored disclosure.

This letter can be accessed here:

https://www.frc.org.uk/Our-Work/Publications/FRC-Board/Year-end-advice-to-preparers-larger-listed-compa.pdf

Financial Reporting: FRC Letter of Advice to Smaller Listed and AIM Companies on How to Improve Annual Reports

On 11 November 2015, the FRC published a letter of advice to smaller listed and AIM companies on how to improve annual reports in areas of particular interest to investors.

The letter states that in particular, investors expect:

- The Strategic Report to be clear, concise, balanced and understandable;
- Accounting policies to be clear and specific, particularly in relation to revenue recognition and expenditure capitalisation; and
- A clear explanation of how the company generates cash flow.

This letter can be found here:

https://www.frc.org.uk/Our-Work/Publications/FRC-Board/FRC-Letter-Year-end-advice-to-preparers-smaller.pdf

Financial Reporting: FRC Review of Companies' Tax Reporting

On 1 December 2015, the FRC stated that it plans to conduct a thematic review of companies' tax reporting in order to promote transparent recording of the relationship between the tax charges and accounting profit.

The FRC stated that it intends to write to a number of FTSE 350 companies prior to their year-end informing them that the Corporate Reporting Review Team will review the tax disclosures in their next published reports. The FRC stated that the aim of this monitoring is to ensure that the quality of corporate reporting is improved.

The FRC is particularly interested in:

- The transparency of tax reconciliation disclosures and how well the sustainability of the effective tax rate is covered; and
- Uncertainties relating to tax liabilities (and assets) where the value at risk in the short-term is not identified.

The FRC also noted that companies are required to disclose the principal risks and uncertainties they face and are expected to explain the actions they propose to mitigate the impact of those risks. The FRC confirmed that the targeted review will consider the totality of the companies' reporting, including relevant disclosures in their strategic and other narrative reports, as well as the detailed accounting disclosures.

A copy of the FRC statement is accessible here:

https://www.frc.org.uk/News-and-Events/FRC-Press/Press/2015/December/FRC-calls-for-transparent-disclosure-of-tax-risks.aspx

Financial Reporting: Financial Reporting Lab Publish Report on Disclosure of Dividends

On 24 November 2015, the FRC's Financial Reporting Lab published a project report on the policy and practice in relation to disclosure about dividends which sets out the findings from its discussions with investors.

The report states that investors want information on:

- Why the company's dividend policy was selected;
- What the policy means in practice;
- What the risks and constraints associated with the policy are; and
- How the policy is delivered in practice.

The report also makes clear that investors are also seeking disclosure of the circumstances in which companies expect to pay special dividends or buy back shares and whether they are in the best interests of the shareholders.

The report can be found here:

https://www.frc.org.uk/Our-Work/Publications/Financial-Reporting-Lab/Lab-Project-Report-Disclosure-of-dividends-%E2%80%93-poli.pdf

Financial Reporting: FRC Discussion Paper on Succession Planning

On 27 October 2015, the FRC published a discussion paper on UK board succession planning, focusing on board succession for executives and non-executives of those companies to which the UK Corporate Governance Code applies. The FRC is requesting comments by 29 January 2016.

The FRC anticipates that feedback will contribute to six key areas:

- Business strategy and culture: The FRC seeks views on how succession planning can be linked to the development of business strategy and company culture, and how that link can be reported on in practice;
- The Nomination Committee: The FRC is requesting opinions on whether the Code is sufficiently clear on the role and responsibility of the committee;
- Board evaluation: The FRC seeks suggestions of practical changes that could help ensure that boards fully consider succession planning within the annual evaluation process;
- The pipeline for executives and non-executives: The FRC wants to gain more information on how companies review their internal talent;
- Diversity: The FRC is seeking ideas on how a succession plan could incorporate and deliver diversity objectives; and
- The role of institutional investors: The FRC seeks views on the experience that companies or investors may have had in terms of engagement about the introduction of new talent to a board.

This discussion paper can be found here:

https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/Discussion-Paper-UK-Board-Succession-Planning.pdf

Financial Reporting: FRC Corporate Reporting Review

On 22 October 2015, the FRC published its Corporate Reporting Review Annual Report for 2015 covering its review of reports and accounts conducted in the year to 31 March 2015.

The report states that:

- The FRC is concerned about how some boards assess materiality. Materiality assessments should not be used to conceal errors or present a desired outcome;
- Some smaller companies do not comply with the relevant standards;

- There were ten areas of corporate reporting that were commonly queried by the FRC during the year including clear and concise reporting, critical judgement, strategic reports and accounting policies;
- Boards should be focussing on disclosures relevant to investors in their strategic report rather than including irrelevant information;
- Boards should make meaningful disclosures of specific judgements when applying their accounting policies; and
- Boards should not include irrelevant information in their reports and accounts but should advocate clear and concise reporting.

This report can be accessed here:

https://www.frc.org.uk/Our-Work/Publications/Corporate-Reporting-Review/Corporate-Reporting-Review-Annual-Report-2015.pdf

Financial Reporting: Modern Slavery Act 2015

On 28 October 2015, two sets of regulations relating to the Modern Slavery Act 2015 (“MSA”) were published.

The Modern Slavery Act (Transparency in Supply Chains) Regulations 2015 sets the figure of £36 million as the global turnover above which businesses will, under the MSA, have to publish a slavery and human trafficking statement each year. This requirement came into force on 29 October 2015.

The MSA makes clear that the total turnover is the annual global turnover. It will include the turnover of the commercial organisation and that of its subsidiaries. It is not limited to turnover in the UK.

This legislation can be accessed here:

http://www.legislation.gov.uk/ukdsi/2015/9780111138847

The Modern Slavery Act 2015 (Commencement no 3 and Transitional Provision) Regulations 2015 provide that, although section 54 MSA came into force on 29 October 2015, the requirement (requiring the publication of this slavery and human trafficking statement) only applies in respect of financial years ending on or before 31 March 2016.

This legislation can be accessed here:

http://www.legislation.gov.uk/uksi/2015/1816/regulation/3/made

A copy of our client briefing on the MSA’s annual statement requirements can be accessed here:

http://www.shearman.com/~/media/Files/NewsInsights/Publications/2015/12/The-Modern-Slavery-Act-2015--New-Reporting-Requirement-CORP-122215.pdf

FCA: Revised Guidance on Advancing its Objectives

On 16 December 2015, the Financial Conduct Authority (“FCA”) published updated guidance on its approach to advancing its objectives. This guidance was produced in response to comments on the FCA’s 2013 version. This guidance sets out what firms and consumers can expect from the FCA and how they intend to deliver their statutory responsibilities. It is based around three operational objectives including protecting consumers, ensuring market integrity and promoting effective competition.

This guidance can be found here:

http://www.fca.org.uk/static/fca/documents/corporate/fca-approach-advancing-objectives-2015.pdf

For a summary of the FCA's 2013 guidance on its approach to advancing its objectives, please see our Q3 2013 Governance and Securities Newsletter available here:

http://www.shearman.com/~/media/Files/NewsInsights/Publications/2013/10/Governance--Securities-Law-Focus-Europe-Edition-__/Files/View-newsletter-Governance--Securities-Law-Focus__/FileAttachment/GovernanceSecuritiesLawFocusCM1013.pdf

FCA Quarterly Consultation No 11

On 4 December 2015, the FCA published its eleventh quarterly consultation paper.

This paper proposes to make changes to different parts of the Handbook as follows:

- Implementation of the Transparency Directive Amending Directive: The FCA is consulting on amendments to its Enforcement Guide ("EG") to comply with the requirement that Member States provide competent authorities with the power to suspend voting rights for shareholders who do not comply with certain Transparency Directive requirements. The FCA is proposing to add rule EG 7.3A to reflect its ability to apply to court for a voting rights suspension order. In deciding whether to apply to the court for such an order, the FCA will consider the full circumstances of each case. The FCA is requesting comments on these proposals by 4 February 2016; and
- Impact on the Listing Rules of proposed Prospectus Rules amendments pursuant to EU regulatory technical standards: The FCA has noted that there are three Listing Rules dealing with listing particulars that cross-refer to rules in the Prospectus Rules which will be amended under CP15/28.

The consultation can be found here:

http://www.fca.org.uk/static/documents/consultation-papers/cp15-42.pdf

LR and DTR: FCA Publishes Handbook Notice No 26 and Response to CP15/19

On 23 October 2015, the FCA published a handbook notice containing the feedback it received on its ninth quarterly consultation paper.

The final instrument is very similar to the draft instrument proposed in the consultation paper. The FCA states that it does not believe that the new LR requirement, with respect to the directors' statement regarding the "going concern" basis of accounting in the annual report, exceeds the comply or explain principle of the Code, or that the FCA is imposing substantively new requirements or introducing a new liability regime. The notice makes clear that the FCA believes that the requirement to prepare the relevant statements in accordance with the FRC's official guidance (on risk management and internal control published in September 2015) is appropriate. All changes to the Handbook are now in force as of 1 December 2015.

The Handbook Notice can be found here:

http://www.fca.org.uk/static/fca/documents/handbook-notices/fca-handbook-notice-26.pdf

The instrument can be found here:

https://www.handbook.fca.org.uk/instrument/2015/FCA_2015_51.pdf

For a summary of the FCA's ninth quarterly consultation paper, please see our Q2 Governance and Securities Newsletter published July 2015 available here:

http://www.shearman.com/~/media/Files/NewsInsights/Publications/2015/07/Governance-and-Securities-Law-Focus-Europe-CM-071415.pdf

Prospectus Directive: FCA Note on Sending Final Terms to Host Competent Authorities

On 27 November 2015, the FCA published a note regarding the upcoming changes to sending final terms to host competent authorities under the Prospectus Directive from 1 January 2016.

The note reiterates that from 1 January 2016, Article 5(4) of the Prospectus Directive will not require issuers to send final terms to the competent authority of host member states. Instead, the home competent authority must send final terms that have been filed with it as home competent authority to the competent authority of host member states.

The note can be found here:

http://www.fca.org.uk/firms/markets/ukla/information-for-issuers/changes-to-final-terms

UKLA Guidance Note: Primary Market Bulletin No 12

On 23 November 2015, the FCA published the twelfth edition of its Primary Market Bulletin. The FCA confirms that several amendments have been made to the UKLA Knowledge Base, which were consulted on in the eleventh Primary Market Bulletin, and also proposes some further changes for consultation.

Proposals for additional amendments to be consulted on include:

- The amendment to the existing procedural note on public offer prospectus—drafting and approval to refer to Article 4(a) of the Prospectus Regulation set out in PR 2.3.1 (minimum information to be included in a prospectus);
- A further draft of a proposed new technical note on the application of related party rules to funds investing in highly illiquid asset classes which has been amended to further clarify when acquisitions from a related party should be considered to be in the ordinary course for a closed-ended investment fund focused on large scale infrastructure assets (and therefore not subject to the related party rules in LR 11);
- The amendment of the existing note on Listing Principle 2—dealing with the FCA in an open and cooperative manner, to reflect that LP 2 applies to all listed companies, not just those with a premium listing; and
- The amendment of technical notes relating to periodic financial information and disclosures of positions held by issuers, investors and management, to reflect the amendments to the DTR which came into force on 26 November 2015.

The FCA Bulletin can be found here:

http://www.fca.org.uk/static/documents/ukla/primary-market-bulletin-12.pdf

Disclosure and Transparency Rules: FCA Consultation on Delaying Disclosure of Inside Information

On 20 November 2015, the FCA produced a consultation paper requesting responses to its proposal to amend its guidance about delaying disclosure of inside information in the Disclosure and Transparency Rules (“DTRs”). The FCA is seeking views on their proposals by 20 February 2016. The FCA notes that it is in the interests of both issuers and investors to have a clear understanding of the basis for classifying information as inside information so that they can properly understand their duties. The FCA states that its aim is to ensure the maintenance of a regime which produces transparency which is useful to investors.

The FCA is proposing to delete the last sentence of DTR 2.5.5.G to clarify that issuers may have a legitimate reason to delay disclosure in circumstances other than the non-exhaustive examples listed in DTR 2.5.3R or the circumstances listed in DTR 2.5.5AR.

The consultation paper also states that:

- Where an issuer has a commercial or PR-related preference to delay disclosure of inside information but public disclosure would not actually damage its interests, the issuer could not justify a delay by claiming that it would prejudice its legitimate interests; and
- Delaying disclosure to protect the price of a relevant security does not fall within the meaning of a legitimate interest.

This consultation paper can be found here:

http://www.fca.org.uk/static/documents/cp15-38.pdf

Directors' Remuneration: GC100 and Investor Group's 2015 Statement

On 10 December 2015, the GC100 and Investor Group published a statement relating to their guidance on remuneration reporting which was originally published in September 2013 and reviewed in December 2014. The 2015 statement concludes that the Group believes that the 2013 guidance coupled with the 2014 statement continues to serve its purpose effectively and therefore no changes will be made.

The statement also makes clear that the group will undertake a full review of the guidance and publish an update in 2016.

This statement can be found here:

http://uk.practicallaw.com/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1248053673794&ssbinary=true

For a summary of the 2014 statement, please see our Q4 Governance and Securities newsletter published in January 2015 available here:

http://www.shearman.com/~/media/Files/NewsInsights/Publications/2015/01/Governance--Securities-Law-Focus-Europe-Edition-CM-012815.pdf

Admission and Disclosure Standards: Consultation on Amendments to Standards and High Growth Segment Rulebook

On 4 December 2015, the London Stock Exchange ("LSE") published Notice N19/15 to consult on proposed amendments to the Admission and Disclosure Standards and the High Growth Segment Rulebook. The notice makes clear that that the majority of the proposed changes relate to the structure of the Standards and are of an "administrative or clarificatory nature."

The Standards are being:

- Restructured so that they may serve as a consolidated resource for issuers and advisors (they will include schedules which contain further detail on the admission process and criteria for each of the relevant markets and segments);
- Revised so as to include an exemption for life science companies; and
- Amended so that the Executive Panel has increased powers to impose a fine of up to a maximum of £100,000 per breach of compliance procedures.

The consultation closed on 8 January 2016.

The notice can be found here:

http://www.londonstockexchange.com/traders-and-brokers/rules-regulations/change-and-updates/stock-exchange-notices/2015/n19.pdf

Draft Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016

HM Treasury are asking for comments on the preliminary draft of the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 to be submitted before 4 February 2016. This draft is only available from HM Treasury on request. The draft Regulations (which will be subject to further policy and legal review and amendment before being finalised) make a number of proposed amendments to FSMA and other primary and secondary legislation, and provide clarification for the purposes of implementation of the Market Abuse Regulation in a number of areas.

The preliminary draft of the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 include provisions which:

- Clarify who falls within the meaning of "persons closely associated" with persons discharging managerial responsibilities ("PDMRs");
- Delete all references to "disclosure rules" in Part 6 of FSMA;
- Delete provisions of FSMA which include the definition of the offence of market abuse, the behaviours that constitute market abuse, the definition of what constitutes an "insider" and what constitutes "insider information" and the requirement for the FCA to produce a code giving guidance to those determining whether or not behaviour amounts to market abuse;
- Give the FCA various powers to require information from issuers, PDMRs and people associated with PDMRs for the purposes of protecting investors, the orderly functioning of the markets and to exercise its functions under the Market Abuse Regulations ("MAR");
- Include administrative powers for the FCA, including the power to require an issuer to publish specific information or a specific statement where it considers this necessary; the power, subject to certain conditions, to require publication of a corrective statement, correcting false or misleading information made public or a false or misleading impression given to the public, by a person; and the power to suspend trading in financial instruments in certain circumstances; and
- Empower the FCA to impose penalties or issue censure for contravention of the provisions of MAR or contravention of the information requirements.

The FCA's consultation webpage can be accessed here:

http://www.fca.org.uk/news/cp15-35-implementing-market-abuse-regulation

Takeover Code: Statement of Public Censure of Advisers for Code Breaches

On 5 November 2015, the Takeover Panel issued a statement of public criticism of Credit Suisse, Freshfields Bruckhaus Deringer ("Freshfields") and Holman Fenwick Willan ("HFW") relating to their conduct as advisers in the acquisition by Vallar plc of interests in two Indonesian coal mining companies which gave rise to a number of breaches of the code.

The breaches were identified as:

- Failure to consult the Panel over whether the two sellers were concert parties and thus a whitewash dispensation to them being required to make a rule 9 mandatory offer (because of the size of shareholding in Vallar plc) should be applied for. Credit Suisse, JP Morgan and HFW were criticised for failing to consult the Panel; with regards to Freshfields, the Panel says it "*could have done more regarding the concert party issue but makes no finding of breach in relation to Section 6(b)*";
- Failure by the financial advisers to discharge their "particular responsibility" to advise their clients. Credit Suisse and JP Morgan were the only parties criticised for this; and
- Failure to provide full disclosure to the Panel of all relevant information Credit Suisse, Freshfields and HFW were criticised and, importantly, the Panel says it accepts that there was no intention on the part of any of them to mislead the Panel. It was only in relation to this breach that the Takeover Panel issued its statement of public criticism.

This statement by the Panel makes clear that:

- The Panel system of regulation relies on parties and their advisers consulting the Panel whenever they are in any doubt as to the application of the Code;
- Where there are doubts as to whether the parties are acting in concert, the need to consult the Panel is heightened;
- Taking legal or professional advice is not an alternative to consultation with the Panel;
- When the Panel is consulted, all relevant facts must be disclosed; and
- Financial advisors have a responsibility to comply with the Code and to ensure that their client and its directors are aware of their responsibilities under the Code.

This statement can be accessed here:

http://www.thetakeoverpanel.org.uk/publication/view/201515-asia-resource-minerals-plc-formerly-bumi-plc

Takeover Code: Response Statement on Additional Presumptions to the Definitions of Acting in Concert

On 23 October 2015, the Code Committee of the Takeover Panel published response statement RS 2015/3 on the introduction of three new presumptions to the definition of "acting in concert" in the Code. This statement was made in response to the Code Committee's publication of a consultation paper on 14 July 2015. The statement makes clear that the Code Committee is proceeding with the amendments to the Code in substantively the same form as those suggested in the consultation paper.

The amendments to the Code came into force on 23 November 2015.

The response statement can be accessed here:

http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/RS201503.pdf

For a summary of the consultation paper of 14 July 2015, please see our Q3 2015 Governance and Securities newsletter available here:

http://www.shearman.com/~/media/Files/NewsInsights/Publications/2015/10/Governance-and-Securities-Law-Focus-CM-101315.pdf

Takeover Code: Response Statement on Amendments to the Definition of Voting Rights

On 23 October 2015, the Code Committee of the Takeover Panel published a response statement in relation to the feedback received on its consultation paper proposing to amend the definition of voting rights in the Code, make minor amendments to the Note on Rule 9.7 (voting restrictions and disposal of interests) and make consequential amendments to Rule 11.1 (when a cash offer is required). The Code Committee have adopted the amendments to the Code as proposed in the consultation paper with some minor amendments.

The amendments to the Code came into effect on 23 November 2015.

The response statement can be accessed here:

http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/RS201502.pdf

For a summary of the consultation, please see our Q3 2015, Governance and Securities newsletter published October 2015 available here:

http://www.shearman.com/~/media/Files/NewsInsights/Publications/2015/10/Governance-and-Securities-Law-Focus-CM-101315.pdf

Takeover Code: New Panel Practice Statements

On 8 October 2015, the Takeover Panel Executive published Practice Statement No 29 and Practice Statement No 30 and withdrew Practice Statement No 27 and Practice Statement No 23 where the relevant sections have now been incorporated into new Practice Statement No 29.

Practice Statement No 29 provides guidance on the Takeover Panel Executive's interpretation and application of Rule 21.2 regarding exclusions to the prohibition on offer related arrangements; agreements between an offeror and offeree relating to the conduct, implementation and terms of an offer; and agreements by which an offeree may agree to pay an inducement fee to an offeror in circumstances set out in Notes 1 and 2 on Rule 21.2.

Practice Statement No 30 explains the compliance of Rule 20.2 in circumstances where commercially sensitive information is supplied to lawyers or economists advising an offeror of an "outside counsel only" basis.

The Panel Statement can be accessed here:

http://www.thetakeoverpanel.org.uk/publication/view/201512-publication-and-withdrawal-of-practice-statements

The Practice Statements can be accessed here:

http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/PS-29-New.pdf; and
http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/PS-30-New.pdf

Consultation on Changes to AIM Rules for Companies

On 15 October 2015, the LSE issued AIM Notice 42 as a consultation paper on the proposed changes to the AIM Rules for Companies which apply to investing companies.

LSE proposes to amend:

- AIM Rule 8 (investing companies), to increase the amount in cash that an applicant seeking admission must raise from £3 million to £6 million; and
- AIM Rule 15 (fundamental changes of business), to introduce a provision that an AIM company that becomes a cash shell following fundamental disposal will be regarded as an "AIM Rule 15 cash shell." This Rule will also state that, within 6 months of becoming an AIM Rule 15 cash shell, the AIM company must make an acquisition or acquisitions which constitute a reverse takeover under AIM Rule 14. There is also a proposal to ensure that where an AIM company became an investing company prior to the date on which the new rules come into effect, the previous AIM Rule 15 (as set out in May 2014) will apply. LSE also proposes to include some new Guidance Notes on AIM Rule 15.

This consultation closed on 12 November 2015, and on 22 December 2015 the LSE published AIM Notice 43 which provides feedback on Aim Notice 42 and confirms the changes to the AIM Rules. The revised AIM rules have been effective from 1 January 2016.

This consultation paper can be accessed here:

http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/aim-notices/aimnotice42.pdf

The feedback on AIM Notice 42 can be accessed here:

http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/aim-notices/aim43.pdf

First UK Deferred Prosecution Agreement Approved by the English Courts

On 30 November 2015, the English Court approved the first Deferred Prosecution Agreement ("DPA") in the UK between the Serious Fraud Office ("SFO") and Standard Bank ("SB"). The Court concluded that the DPA was in the interests of justice and its terms were fair, reasonable and proportionate.

The SB offence relates to a $ 6 million payment in March 2013 by a former sister company of SB to a local partner in Tanzania, which the SFO alleged was intended to induce members of the Government of Tanzania to show favour to SB. The terms of the DPA provide that SB will pay to HM Treasury a total of $25.2 million (consisting of a financial penalty of $16.8 million and $ 8.4 million disgorgement of profits) and will pay the Government of Tanzania a further $ 7 million in compensation. SB will also pay the SFO's reasonable costs of £330,000 in relation to the investigation and subsequent resolution of the DPA. In addition, SB will be subject to an independent review of its existing anti-bribery and corruption controls, policies and procedures regarding compliance with the Bribery Act 2010 and other applicable anti-corruption laws and will be required to implement recommendations of the independent reviewer.

As a result of the DPA, the charge against SB has been suspended for three years. SB also agreed to a statement of facts, which it will not contest in any future proceedings. After the expiry of the three year period, and provided that SB complies with the terms of the DPA, the SFO will discontinue the proceedings.

It is likely that further DPAs will be announced over the course of this year and David Green, the Director of the SFO, has stated that the SB DPA will serve as a template for future agreements. Green has, however, cautioned that "significant cooperation from the company will be required to convince the overseeing judge that the agreement is fair and just." For example, Green highlighted that the SFO would not advocate a DPA unless the company concerned has shown the maximum amount of cooperation (including, potentially, waiving privilege over certain documents). Similarly, Ben Morgan, the SFO's joint head of bribery and corruption, made it clear that a prerequisite of a DPA is that the company concerned should make early and full disclosure to the SFO. In SB's case, the SFO was complimentary of SB's conduct in promptly bringing the offence to the SFO's attention.

This particular DPA is also significant as it follows the first indictment brought by the SFO against a corporate body alleging failure to prevent bribery contrary to section 7 of the Bribery Act 2010. The SB DPA contrasts with the subsequent case of Sweett Group PLC, which became the second company charged under section 7 of the Bribery Act in relation to conduct in the Middle East. Sweett Group subsequently pleaded guilty to that offence and sentencing will take place on 12 February 2016.

US DEVELOPMENTS

SEC and NYSE/Nasdaq Developments

FAST Act Amends JOBS Act and Creates New Exemption for Resales of Restricted Securities

On 4 December 2015, the Fixing America's Surface Transportation Act, or FAST Act, was signed into law. The FAST Act includes a number of provisions affecting US securities law, including changes to the Jumpstart Our Business Startups Act ("JOBS Act"), changes to US Securities and Exchange Commission ("SEC") disclosure requirements and a new statutory exemption for private resales of securities.

The FAST Act relaxes certain provisions of the JOBS Act to facilitate initial public offerings by emerging growth companies ("EGCs"). EGCs can now commence roadshows within 15 calendar days of publicly filing the registration statement with the SEC, as opposed to the previous 21-calendar day waiting period, and can rely on continued treatment as an EGC for certain purposes during a grace period if they lose EGC status during the SEC review process. Further, EGCs can start the SEC review process without having to include financial information for periods that will not be required to be included at the time the IPO is expected to go on the road.

- For example, an issuer that expects to market its IPO during 2016 on the basis of audited financial statements for 2015 could commence the SEC review process in 2015 or early 2016 without ever having to prepare audited financial statements for 2013. However, the SEC will still require interim financial information, even if the issuer reasonably expects such interim

financial information to be superseded by annual or interim financial information that will be included in the registration statement at the time of the contemplated offering.

- In addition, the statutory change permitting the omission of financial information relating to periods that are not expected to be included at the time of the offering also applies to Regulation S-X Rule 3-05 financial statements of an acquired business. An EGC may omit such acquired business financial statements if the EGC reasonably believes those financial statements will not be required at the time of the contemplated offering. Specifically, such separate financial statements would not be required at the time of the offering if sufficient time has elapsed since the acquisition and such acquired business has been part of the issuer's financial statements for a sufficient amount of time.

The legislation further directs the SEC to simplify, for all filers, Regulation S-K and eliminate duplicative, overlapping or otherwise unnecessary disclosure requirements.

The FAST Act also amends the US Securities Act of 1933 (the "Securities Act") to add a new Section 4(a)(7) based on the so-called 4(a)(1½) exemption for resales of restricted securities by persons other than the issuer. The Section 4(a)(1½) exemption, which is based on case law and has been recognised by the SEC in no-action letters and interpretative releases, but which has not previously been formally adopted in statute, has been interpreted to permit, in certain circumstances, the resale of restricted securities in a private placement by persons other than the issuer.

- The exemption created by new Section 4(a)(7) requires that purchasers of the restricted securities must be "accredited investors" as defined in Rule 501(a) under the Securities Act. In addition, Section 4(a)(7) prohibits general solicitation and general advertising by the seller and any person acting on the seller's behalf. If the issuer is not subject to reporting requirements under the US Securities Exchange Act of 1934, as amended (the "Exchange Act"), nor exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, Section 4(a)(7) requires the seller to make available reasonably current information about the issuer, including the issuer's most recent balance sheet and income statement.
- The legislation expressly provides that Section 4(a)(7) is not the exclusive means for establishing an exemption from SEC registration. This should give market participants some comfort that the traditional Section 4(a)(1½) exemption continues to be available, and that it is not necessary to comply with all of the requirements of Section 4(a)(7) in every resale that relies on a private placement exemption.

Our related client publications are available at:

http://www.shearman.com/en/newsinsights/publications/2015/12/jobs-act-and-sec-disclosure-requirements; and
http://www.shearman.com/en/newsinsights/publications/2015/12/sec-staff-issues-guidance-on-jobs-act

SEC Proposes New "Publish What You Pay" Rule for Resource Extraction Issuers

Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), which was signed into law in 2010, directed the SEC to issue rules requiring resource extraction issuers to report annually on payments made to governments. In August 2012, the SEC adopted a final rule implementing Section 1504 of the Dodd-Frank Act, but in July 2013 the SEC rule was vacated by US federal courts.

On 11 December 2015, the SEC issued a new proposed rule to implement Section 1504 of the Dodd-Frank Act. In the newly proposed rule, the SEC addresses the findings of the court that vacated its prior rule. In addition, the SEC indicates that it is endeavouring to more closely align its reporting regime with developments in extractive industry transparency in the European Union and Canada since its original rulemaking, with a view to enhancing the consistency and comparability of the SEC rules with the disclosure requirements of these key jurisdictions.

Under the new proposed rule, SEC reporting issuers that are engaged in the commercial development (including exploration, extraction, processing, export and the acquisition of a license for any such activity) of oil, natural gas or minerals would be required to file annually on Form SD certain information regarding payments made to governments,

including subnational governments and state-owned companies. Information regarding such payments would need to be reported at the level of each project and only payments above $100,000 would be required to be included. The SEC is proposing to recognise the equivalency of other jurisdictions' "publish what you pay" reporting regimes that the SEC determines are substantially similar to its rules—this could ultimately include the European Union and Canada.

The SEC will adopt a final rule implementing Section 1504 of the Dodd-Frank Act after considering comments received on the proposed rule. The SEC expects to adopt a final rule by June 2016. If it meets this timetable, the first government payments report would be for the first fiscal year ended on or after 30 June 2017. Until a new final SEC rule becomes effective, 20-F filers are not subject to "publish what you pay" reporting under Section 1504 of the Dodd-Frank Act and need only comply with any applicable home country reporting requirements.

Initial comments on the proposed rule were due on 25 January 2016. A second round of comments, responding to issues raised in the initial comment period, will be due on 16 February 2016.

Our related client publication is available at:

http://www.shearman.com/en/newsinsights/publications/2015/12/shining-a-light-on-payments-to-governments

Climate Change – The Peabody Settlement and Exxon Mobil Investigation

In 2007, the New York Attorney General served subpoenas on five companies (Peabody Energy, the world's largest private sector coal producer, and four coal-intensive power generating companies) requesting information on investigations those companies had conducted in the past and the conclusions those companies had made at the time regarding the effects of climate change on their businesses, in order to determine whether those companies' disclosures to investors about such effects were inadequate. The subpoenas were issued under state law at a time of increasing media and investor interest in climate change disclosure, but before the SEC published its climate change interpretive guidance in 2010. Since then, the SEC guidance has significantly increased climate change reporting by public energy companies in the United States.

In November 2015, Peabody Energy entered into a settlement agreement with the New York Attorney General, which focused on two allegations:

- Statements in Peabody's public disclosures that it could not reasonably predict the future impact of any climate change regulation were inconsistent with the fact that Peabody and its consultants had looked into this issue at some length and had projected material and severe impacts from certain potential regulations;
- The International Energy Agency ("IEA") projections included in Peabody's public disclosures showing the impact of climate change developments on the future of the coal market were "cherry picked." Peabody discussed demand under the IEA's "current policies scenario," which is the high case for coal usage, rather than its "new policies scenario," which assumes the implementation of announced government carbon commitments and policies and which the IEA considers its baseline scenario.

The New York Attorney General recently served a subpoena on Exxon Mobil, which similarly seeks information from as far back as 1977, in order to assess Exxon Mobil's climate change disclosures.

The Peabody settlement and the investigation of Exxon Mobil have recast a spotlight on the sufficiency of climate change disclosure by energy companies. In drafting, reviewing and updating their climate change disclosure, including risk factors, companies should take into consideration any investigations the company has made into the effects of climate change on the company's business, including on the markets for the company's products. To the extent a company's disclosure includes projections as to the market or demand for a product, companies should ensure that such disclosure is balanced and reflects a range of conventional scenarios on the impact of climate change regulation.

Our client publication surveying recent developments in corporate climate change reporting is available at:

http://www.shearman.com/en/newsinsights/publications/2015/12/corporate-climate-change-reporting

SEC Requests for Comment on Effectiveness of Regulation S-X Financial Disclosures About Entities Other than the Registrant

As part of its disclosure effectiveness initiative, in September 2015, the SEC issued a request for comment on the effectiveness of certain financial disclosure requirements in Regulation S-X for entities other than a registrant. The request for comment focuses on the requirements for the form and content of financial disclosures that companies must file with the SEC about acquired businesses, affiliated entities and guarantors and issuers of guaranteed securities.

The period during which the public could submit comments ended on 30 November 2015. After considering the comments received, the SEC may proceed with a rulemaking proposal to amend the existing disclosure requirements, on which there would be another round for public comment before a final rule is adopted.

The SEC's request for comment is available at:

http://www.sec.gov/rules/other/2015/33-9929.pdf

Comments submitted in response to the request can be viewed at:

http://www.sec.gov/comments/s7-20-15/s72015.shtml

New SEC Guidance on General Solicitation and General Advertising

In certain types of private placements of securities, a condition to complying with the relevant exemption from Securities Act registration is that the issuer, as well as those acting on its behalf, must not use "general solicitation" or "general advertising" to market the securities. In August 2015, the SEC issued a "no action" letter and released new interpretative guidance relating to what constitutes general solicitation or general advertising.

Among other things, the new guidance clarifies the SEC's position on the following:

- The use of an unrestricted, publicly available website to offer or sell securities constitutes a general solicitation;
- Factual business information that does not condition the public mind or arouse public interest in a securities offering is not an offer and may be disseminated widely without violating the prohibition on general solicitation. "Factual business information" typically is limited to information about the issuer, its business, financial condition, products, services or advertisement of such products or services, provided the information is not presented in such a manner as to constitute an offer of the issuer's securities. Factual business information generally does not include predictions, projections, forecasts or opinions with respect to valuation of a security;
- The existence of a pre-existing, substantive relationship is one means, but not the exclusive means, of demonstrating the absence of a general solicitation. Accordingly, an issuer (or a person acting on its behalf) may make offers of securities to persons with whom it has such a relationship without violating the prohibition on general solicitation. A "substantive" relationship is one in which the issuer (or a person acting on its behalf) has sufficient information to evaluate, and does, in fact, evaluate a prospective offeree's financial circumstances and sophistication in determining his or her status as an accredited or sophisticated investor.

The SEC's compliance and disclosure interpretations relating to general solicitation and general advertising are available at:

http://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm#256.23

NYSE Increases Annual Listing Fees

The New York Stock Exchange ("NYSE") has increased the annual fee for an issuer's shares listed on the NYSE to the greater of $52,500 or $0.001025 per share, from the current fee rate (the greater of $45,000 or $0.001 per share). The fee increase came into effect on 1 January 2016.

SEC Urged to Adopt Rules Requiring Reporting of Short-Sale Activities

In October 2015, the NYSE and the National Investor Relations Institute submitted a petition requesting the SEC to adopt new rules that would require the periodic public disclosure of short-sale activities by institutional investment managers, along the same lines as the reporting currently required for long positions.

The petition advocates the SEC to "bring light to a less transparent and increasingly consequential corner of the securities market." It does not call on the SEC to impose additional restrictions on the practice of short selling.

The petition letter is available at:

http://www.sec.gov/rules/petitions/2015/petn4-689.pdf

Nasdaq Solicits Comments on Potential Changes to Shareholder Approval Rules

In November 2015, The Nasdaq Stock Market ("Nasdaq") announced that it is seeking public comments on the rules for listed companies to obtain shareholder approval prior to issuing securities in connection with (i) acquisitions, (ii) equity-based compensation, (iii) a change of control and (iv) private placements amounting to 20% or more of the company's outstanding common stock or voting power. Under the existing rules, foreign private issuers may claim an exemption from the shareholder approval rule by following their home country practice, but are required to publicly disclose claiming the exemption and provide Nasdaq with a written statement from the company's counsel certifying that the company's practices are not prohibited by the home country's laws.

Specifically, in connection with the shareholder approval requirement for private placements involving the issuance of common stock or securities convertible into common stock equal to 20% or more of the common stock or voting power outstanding at a price less than the greater of book or market value of the stock, Nasdaq is seeking comments regarding the following, among others:

- the appropriate method of determining market value (currently, market value is measured by reference to the closing bid price);
- whether Nasdaq should eliminate the book value measurement prong of the rule;
- whether a higher percentage threshold should be adopted for smaller companies;
- whether a company should be permitted to obtain pre-approval to issue shares in capital raising or acquisition transactions on a periodic basis, and, if so, the terms that must be included in a pre-approval; and
- whether the percentage threshold requiring shareholder approval should be based on a sliding scale depending on the size of the discount to market price.

The comment period will run until 15 February 2016. The solicitation of comments notice is available at:

https://listingcenter.nasdaq.com/assets/Shareholder%20Approval%20Comment%20Solicitation.pdf

Recent Trends and Patterns in FCPA Enforcement

In January 2016, we published our bi-annual *Recent Trends and Patterns in FCPA Enforcement* report, part of our FCPA Digest, which together provide an insightful analysis of recent enforcement trends and patterns in the US, the UK and elsewhere, as well as helpful guidance on emerging best practices in FCPA and global anti-corruption compliance programs.

Following a busy 2014, the US Department of Justice (“DOJ”) and the SEC took a step back in 2015 to refocus and reprioritise their efforts. While the SEC pursued ten low-value corporate enforcement actions, the DOJ took a back seat with only two—indicating a greater interest in pursuing individual enforcement actions and apparently conserving its resources to focus on a set of large ongoing investigations.

Among the highlights from 2015 were:

- 12 corporate enforcement actions with total sanctions of $143.1 million reflect a slowdown in enforcement activity by the DOJ and SEC;
- The 12 corporate enforcement actions have resulted in total average corporate penalties of $11.9 million—significantly lower than previous years;
- The DOJ’s trial difficulties in the prosecution of former PetroTiger CEO Joseph Sigelman and the failed extradition of Dmytro Firtash reflect the government’s ongoing obstacles to successfully prosecuting individuals;
- The DOJ’s decision to publicly decline to prosecute PetroTiger for FCPA violations, while noteworthy, may be of limited significance for large companies;
- The SEC breaks new ground in its enforcement action against The Bank of New York Mellon, concluding that the provision of prestigious internships to the family members of foreign officials is sufficient to trigger FCPA liability;
- The announcement of the Yates Memo, although not a substantive change to DOJ policy nor to the historical expectations of the DOJ Fraud Section and the SEC Division of Enforcement, nevertheless puts increasing pressure on prosecutors to demand information on culpable individuals and then to either bring a prosecution or justify not doing so;
- The UK Serious Fraud Office entered into its first ever deferred prosecution agreement with Standard Bank Plc over the bank’s violations of section 7 of the UK Bribery Act;
- Personnel changes at the DOJ raise an interesting new dynamic, but the FCPA will continue to be a priority.

Our January 2016 report is available at:

http://www.shearman.com/en/newsinsights/publications/2016/01/fcpa-digest-2016

Sanctions Developments

Navigating Iran Sanctions After Implementation Day

Although the United States, the European Union and the United Nations lifted a number of sanctions targeting Iran on 16 January 2016 (“Implementation Day”) in accordance with the terms of the recent Iran nuclear deal, the immediate impact for financial institutions and companies considering doing business in Iran may be more limited than some of the news headlines may suggest. Our publication highlighting some of the main issues for financial institutions and companies is available at:

http://www.shearman.com/~/media/Files/NewsInsights/Publications/2016/01/Navigating-Iran-Sanctions-after-Implementation-Day-LT-012016.pdf

Noteworthy US Securities Law Litigation

In re Chinacast Education Corporation Securities Litigation: Court Finds Corporate Scienter Can Be Imputed In Certain Circumstances Even Though Employee’s Actions Were Adverse to the Company’s Interests

On 23 October 2015, in *In re Chinacast Education Corporation Securities Litigation*, the federal appellate court based in California addressed an issue of first impression within the jurisdiction of this court: whether an employee’s intent to defraud may be imputed to the corporation as a basis for the company’s liability for securities fraud under Section 10(b)

of the Securities Exchange Act even where the employee acted for his or her own personal benefit and against the company's interests. The court held that, even though the intent of such an employee ordinarily may not be imputed to the company, imputation is permissible where the employee acts with apparent authority and an innocent third party relies on the employee's actions.

In *In re Chinacast*, the CEO and founder of a for-profit educational services provider defrauded the company of over $120 million and thus devastated its finances. There was no dispute that the CEO committed securities fraud. The only issue was whether his fraudulent intent could be imputed to the company. While the actions of corporate agents ordinarily are imputed to the company, an "adverse interest exception" protects the corporation from liability for the conduct of employees who act for their own personal benefit and against the company's interests. But the court held that where the employee acts under the cloak of apparent authority from the company and an innocent third party relies on the employee's actions, an "exception to the exception" allows the employee's adverse actions to be imputed to the corporation. This rule is meant to ensure the fair allocation of risk in protecting innocent parties who rely on an agent's apparent authority and to incentivize corporations to carefully choose and monitor high-ranking corporate officials (who are the most likely employees to have such authority). In this case, the securities fraud claims were based on disclosures that the CEO made with apparent authority concerning the company's finances and innocent investors relied on these statements.

Although this was an issue of first impression within the jurisdiction of this court, the court here noted that other courts around the country have adopted the same rule. The court found it particularly significant that the employee at issue was the company's CEO and founder and that the corporation's board failed to properly oversee him. In addition, the court explained that at the pleading stage of a securities class action, whenever an employee acts with fraudulent intent under his or her apparent authority from the company and a claim for securities fraud is brought by a legitimate investor, that intent will be imputed to the company at this initial stage because all investors are presumed at this early point to have relied on the alleged misrepresentations or omissions at issue.

United States v. Litvak: Trial Court's Refusal to Allow Expert Evidence on Materiality Leads to Reversal of Conviction on Appeal

On 8 December 2015, in *United States v. Litvak*, the federal appellate court based in New York reversed the conviction of Jesse Litvak, a bond trader at Jefferies & Company, because the trial court exceeded its authority when it excluded from trial evidence related to whether the information that the defendant allegedly misrepresented was material to a reasonable investor. The appellate court also held that the government did not need to prove that the defendant had an "intent to harm," but only a lower level of fraudulent intent, and that based on the evidence that was actually presented for most of the claims, a rational jury could have concluded that the defendant's misrepresentations were material. For a subset of claims related to statements made to the United States Department of the Treasury, however, the court held that the defendant's misstatements were not material in the context of those specific claims.

Litvak was convicted for fraudulently misrepresenting (i) to purchasers, the amount that Jefferies paid to acquire residential mortgage-backed securities ("RMBS"), (ii) to sellers, the price at which Jefferies agreed to resell RMBS and (iii) to purchasers, that Jefferies was acting as a middleman for another party trying to sell its RMBS even though Jefferies actually owned the securities already. After a fourteen-day trial in early 2014, Litvak was convicted on 15 counts of securities fraud for making these misrepresentations in numerous transactions with several counterparties. The appellate court held that based on the evidence that was presented at trial, including counterparties' testimony that the misrepresented facts were important to them, a rational jury could have concluded that Litvak's misrepresentations were material to the private parties that he transacted with. But the court went on to hold that the trial court improperly disallowed Litvak's presentation of expert testimony on what factors are relevant to the investment process of "reasonable" investors in the RMBS market. This excluded evidence was particularly relevant in light of the complex and subjective nature of the RMBS market. The court further held that the exclusion of this evidence was not "harmless,"

and therefore vacated Litvak's conviction and remanded the case for a new trial, because Litvak did not have other proof available to rebut the government's evidence of what information would be important to a reasonable RMBS investor.

After making this ruling, the court went on to issue several evidentiary rulings intended to provide guidance as to what other types of evidence are admissible on the issues of materiality and fraudulent intent. But the issue that led to the court's vacating Litvak's conviction was the exclusion of expert testimony about the investment decisions of investors in the opaque RMBS market. Parties facing charges of securities fraud should consider presenting expert testimony to show what information a reasonable investor in a particular market at issue would weigh in making investment decisions.

Recent SEC/DOJ Enforcement Matters

In the Matter of Crédit Agricole Corporation and Investment Bank: Several Regulators Reach Settlements with Crédit Agricole Corporation and Investment Bank for a Total of $787 Million for Sanctions Violations

On 20 October 2015, Crédit Agricole Corporate and Investment Bank ("CA-CIB"), a subsidiary of the French bank Crédit Agricole S.A., reached settlements with several US federal and state regulators in which the company agreed to pay a total of $787,300,000, entered into deferred prosecution agreements with certain regulators, and agreed to certain other compliance conditions in order to resolve its potential liability for violations of US sanctions regulations and other federal and state laws prohibiting financial transactions with improper parties and the falsification of financial records. The conduct at issue related to thousands of transactions that CA-CIB processed using several methods designed to avoid detection by US financial institutions.

From 2003 to 2008, CA-CIB, through subsidiaries and predecessor entities primarily located in Switzerland, processed thousands of transactions, totaling at least hundreds of millions of dollars, that traveled through the US on behalf of parties subject to US sanctions mainly against parties located in Sudan, but also in Burma, Iran and Cuba. CA-CIB employees used several techniques that were approved by high-level officers to remove the names and locations of the sanctioned parties from transactions traveling through the US, including transactions sent to CA-CIB's New York branch. Communications uncovered during the investigations showed CA-CIB employees, including compliance personnel, taking positions that were clearly inconsistent with US law (such as the position that US regulations did not apply to activities conducted in Switzerland even if they involved transactions traveling through the US). This evidence also showed written policies directing employees to omit information from transactions that would identify parties as being from certain sanctioned countries in order to avoid detection by US financial institutions.

CA-CIB's activities were investigated by the US Attorney's Office for the District of Columbia (which is part of the DOJ), the Treasury Department's Office of Foreign Assets Control ("OFAC") and the Board of Governors of the Federal Reserve System at the federal level and by the New York County District Attorney's Office and the New York State Department of Financial Services at the state level. The approximately $787 million that CA-CIB agreed to pay was divided among these different regulators. In addition, CA-CIB entered into deferred prosecution agreements and agreed to compliance and remedial steps. While CA-CIB received some credit for, among other things, its cooperation with the investigation, its remedial actions, and the fact that the conduct at issue subsided recently, other factors, such as the egregiousness of the conduct, CA-CIB's status as a global financial institution and CA-CIB's lack of proper controls were deemed to aggravate the nature of its conduct. This matter serves as a reminder that foreign companies doing business in the US are not shielded from the laws and regulations of the United States just because the companies are located outside the US. Such companies should assess what US rules apply to their business and take the steps necessary to ensure compliance with those rules.

In the Matter of JPMorgan Chase Bank, N.A., et al., File No. 3-17008: JPMorgan Agrees to Pay $307 Million for Undisclosed Preferences for Investing Customer Funds in Proprietary Investment Vehicles

On 18 December 2015, JPMorgan Chase Bank, N.A. ("JPMCB") and J.P. Morgan Securities LLC ("JPMS") reached a civil settlement with the SEC resolving allegations that they failed to disclose certain conflicts of interest related to investment programs in which they and several other bank entities and affiliates (collectively, or as applicable, "JPMorgan") invested on behalf of high net worth customers. In addition to agreeing to pay a total of $267 million to the SEC, including disgorgement of profits, prejudgment interest and a civil monetary penalty, JPMCB and JPMS agreed to pay an additional $40 million to the Commodity Futures Trading Commission because some of the investments at issue involved commodities. As part of the settlement with the SEC, JPMCB and JPMS acknowledged that the conduct at issue violated the federal securities laws and agreed to the censure of JPMS.

JPMorgan offered high net worth clients investment programs that invested funds in various portfolios. For various periods from 2008 until early 2014, depending on the investment program at issue, JPMorgan did not disclose conflicts of interest arising from its preference for investing customers' funds in proprietary JPMorgan-managed mutual funds and hedge funds for which JPMorgan would earn management fees, as well as for investing in hedge funds managed by third parties that shared fees with JPMorgan. In addition, JPMorgan did not disclose that certain of its funds could have invested in products that would have charged lower fees than the investment types chosen. During the relevant periods, as much as 50% of customers' investments were invested in proprietary JPMorgan funds, though toward the end of the relevant period this proportion decreased to levels as low as approximately 30%. After the relevant periods, JPMorgan amended its disclosures for these investment programs to note its preference for investing in its own proprietary funds.

The settlement here provides that JPMorgan's failure to disclose the conflicts described above constituted willful civil violations by JPMS of provisions of the federal securities laws relating specifically to investment advisers and by JPMCB of provisions prohibiting misrepresentations or omissions in securities transactions more generally. The SEC considered favorably JPMorgan's cooperation with the SEC and remedial actions related to the implementation of policies concerning the disclosure of conflicts of interest. For certain of the investment programs at issue, JPMorgan did disclose that it had a conflict of interest when it invested client funds in its own proprietary funds because those investments increased the revenue that JPMorgan received, and it also disclosed how clients' assets were allocated between proprietary and third-party investment funds. But the SEC determined that those disclosures were not sufficient because they still did not disclose that JPMorgan preferred to invest its clients' assets in the company's proprietary funds. This settlement against JPMorgan demonstrates the heightened sensitivity of market regulators to any potential conflicts of interest; financial institutions and other companies should pay close attention.

CONTACTS

This newsletter is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

If you wish to receive more information on the topics covered in this publication, you may contact your usual Shearman & Sterling representative or any of the following:

EUROPE

Nicolas Bombrun
Paris
+33.1.53.89.48.48
nicolas.bombrun@shearman.com

Peter Breschendorf
Frankfurt
+49.69.9711.1214
peter.breschendorf@shearman.com

Simon Cohen
London
+44.20.7655.5946
simon.cohen@shearman.com

Tobia Croff
Milan
+39.02.0064.1509
tobia.croff@shearman.com

David Dixter
London
+44.20.7655.5633
david.dixter@shearman.com

Domenico Fanuele
Rome
+39.06.697.679.210
dfanuele@shearman.com

Fabio Fauceglia
Milan
+39.02.0064.1508
fabio.fauceglia@shearman.com

Apostolos Gkoutzinis
London
+44.20.7655.5532
apostolos.gkoutzinis@shearman.com

Jonathan Handyside
London
+44.20.7655.5021
jonathan.handyside@shearman.com

Guillaume Isautier
Paris
+33.1.53.89.70.00
gisautier@shearman.com

Simon Jerrum
London
+44.20.7655.5727
simon.jerrum@shearman.com

George Karafotias
London
+44.20.7655.5576
gkarafotias@shearman.com

Jeremy Kutner
London
+44.20.7655.5743
jeremy.kutner@shearman.com

Hervé Letréguilly
Paris
+33.1.53.89.71.30
hletreguilly@shearman.com

Laurence Levy
London
+44.20.7655.5717
laurence.levy@shearman.com

Mehran Massih
London
+44.20.7655.5603
mmassih@shearman.com

Jacques B. McChesney
London
+44.20.7655.5791
jacques.mcchesney@shearman.com

Cyrille Niedzielski
Paris
+33.1.53.89.89.30
cniedzielski@shearman.com

Richard J.B. Price
London
+44.20.7655.5097
rprice@shearman.com

Barnabas W.B. Reynolds
London
+44.20.7655.5528
barney.reynolds@shearman.com

Michael Scargill
London
+44.20.7655.5161
michael.scargill@shearman.com

Sami L. Toutounji
Paris
+33.1.53.89.70.62
stoutounji@shearman.com

AMERICAS

Jerome S. Fortinsky
New York
+1.212.848.4900
jfortinsky@shearman.com

Jason R. Lehner
Toronto
+1.416.360.2974
jlehner@shearman.com

Doreen E. Lilienfeld
New York
+1.212.848.7171
dlilienfeld@shearman.com

John Madden
New York
+1.212.848.7055
jmadden@shearman.com

Manuel A. Orillac
New York
+1.212.848.5351
morillac@shearman.com

Antonia E. Stolper
New York
+1.212.848.5009
astolper@shearman.com

Robert C. Treuhold
New York
+1.212.848.7895
rtreuhold@shearman.com

ASIA

Matthew Bersani
Hong Kong
+852.2978.8096
matthew.bersani@shearman.com

Peter Chen
Hong Kong
+852.2978.8012
peter.chen@shearman.com

Masahisa Ikeda
Tokyo
+81.3.5251.0232
mikeda@shearman.com

Colin Law
Hong Kong
+852.2978.8090
colin.law@shearman.com

Kyungwon (Won) Lee
Hong Kong
+852.2978.8078
kyungwon.lee@shearman.com

Andrew R. Schleider
Singapore
+65.6230.3882
aschleider@shearman.com

Paloma Wang
Hong Kong
+852.2978.8018
paloma.wang@shearman.com

ABU DHABI | BEIJING | BRUSSELS | DUBAI | FRANKFURT | HONG KONG | LONDON | MENLO PARK | MILAN | NEW YORK | PARIS
ROME | SAN FRANCISCO | SÃO PAULO | SAUDI ARABIA* | SHANGHAI | SINGAPORE | TOKYO | TORONTO | WASHINGTON, DC

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

9 APPOLD STREET | LONDON | UK | EC2A 2AP

Copyright © 2016 Shearman & Sterling LLP. Shearman & Sterling LLP is a limited liability partnership organized under the laws of the State of Delaware, with an affiliated limited liability partnership organized for the practice of law in the United Kingdom and Italy and an affiliated partnership organized for the practice of law in Hong Kong.
*Abdulaziz Alassaf & Partners in association with Shearman & Sterling LLP